IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12699 of 2001
with
SPECIAL CIVIL APPLICATION NO. 12700, 12702,
12703, 12704, 12705, 12706 OF 2001
WITH
SPECIAL CIVIL APPLICATION NO. 630 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHIEF OFFICER

Versus

CHANDRAKANT HARILAL RAKHOLIYA

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Appearance:

1. Special Civil Application No. 12699 of 2001
MS SEJAL K MANDAVIA for Petitioner No. 1
..... for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/04/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Sejal K. Mandavia for the petitioner in all these petitions filed by the Keshod Municipality. It was submitted by her that the petitioner has challenged in all these petitions, individual award passed by the Labour Court, Junagadh against the petitioner Keshod Municipality. It was her submission that in this group of petitions, common contentions have been raised by the petitioner Municipality and, therefore, this court may decide the same by common order. She has also submitted that save and except the petition being special civil application no. 630 of 2002 wherein the labour court has made the award of reinstatement with 20 per cent of the back wages, in all the remaining petitions, the labour court has made the award of reinstatement with continuity of service with full back wages and, therefore, save and except this little distinction in the award made by the labour court, there is no any other distinction in this group of petitions and identical questions have been raised and, therefore, same may be decided and disposed of by way of common order.

Considering the request made by the learned advocate Ms. Mandavia for the petitioner, this group of petitions has been decided by way of common order.

Details of each petition are as under:

The respondent workman in Special Civil Application No. 12699 of 2001 namely Shri Chandrakant Harilal Rakholiya was appointed on 14.3.1991 as a daily wager and his services were terminated on 3rd December, 1991 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 28th October, 1999.

The respondent workman in Special Civil Application No. 12700 of 2001 namely Shri Chandulal was appointed on 1st May, 1996 as a daily wager and his services were terminated on 5th July, 1997 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 28th September, 1999.

The respondent workman concerned in Special Civil Application No. 12702 of 2001 was appointed on 1.5.1990 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has

passed the award of reinstatement with full back wages with continuity of service on 27th October, 1999.

The respondent workman concerned in Special Civil Application No. 12703 of 2001 was appointed on 1.6.1996 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 27th October, 1999.

The respondent workman concerned in Special Civil Application No. 12704 of 2001 was appointed on 1.4.89 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 28th October, 1999.

The respondent workman concerned in Special Civil Application No. 12705 of 2001 was appointed on 1.4.96 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 28th October, 1999.

The respondent workman concerned in Special Civil Application No. 12706 of 2001 was appointed on 1.4.96 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has passed the award of reinstatement with full back wages with continuity of service on 28th October, 1999.

The respondent workman concerned in Special Civil Application No. 630 of 2002 was appointed on 1.4.90 as a daily wager and his services were terminated on 5.7.1997 by way of an oral order. The labour court has passed the award of reinstatement with 20 % back wages alone with continuity of service on 6.7.2001.

During the course of hearing, it was submitted by the learned advocate Ms. Mandavia that the labour court has committed gross error in granting the relief in favour of the worker concerned who were appointed as a daily wagers. According to her, there was a mere technical breach of section 25-F of the Industrial Disputes Act, 1947 and the labour court has granted the relief of reinstatement and that too with full back wages in favour of the workmen concerned save and except the workman in special civil application no.630 of 2002 for

the intervening period which covers the period of more than six years or so and in one case, the period is more than ten years. According to her submission, the petitioner Keshod Municipality who was the first party before the labour court is a statutory authority and a public body and such a statutory and public body has to suffer the financial burden by paying idle wages in the form of back wages and ultimately public exchequer has to suffer. It was also submitted by her that there was some lapse on the part of the petitioner municipality in not leading proper evidence and to produce the documentary evidence before the labour court. According to her, it was the duty of the labour court to see that the amount of back wages cannot be granted against the public body without taking the work from the workman concerned. She has submitted that the labour court ought to have followed the principle of No work No Pay while granting relief of reinstatement in favour of the respondent workman concerned in this group of petitions. She has submitted that in such a situation, some interference of this Court is necessary while exercising the powers under Article 226 and 227 of the Constitution of India. She has also submitted that by passage of time, the posts are not available in the petitioner municipality and the funds are also not available with the municipality but this aspect has not been taken into account by the labour court while passing the awards in question.

I have considered the submissions made by the learned advocate Ms. Mandavia on behalf of the petitioner Municipality. I have perused the awards in each case passed by the labour court Junagadh. IN each case, the workman concerned has filed the statement of claim in support of his claim and the written statement thereto have been filed by the petitioner who was the first party before the labour court in the respective references. However, in one case in respect of the workman in special civil application no. 12699 of 2001, the Keshod Municipality has not filed the written statement after the matter was remanded by this court, though sufficient opportunity was given by the labour court to the petitioner municipality. In each case, the workman has produced relevant documents before the labour court and the workman was examined on oath before the labour court. Similarly, purshis was filed to consider the oral evidence vide Exh. 16 and thereafter, the matters were heard on merits by the labour court.

In respect of the workman covered by special civil application no. 12704 of 2001 also, same request was made to adopt the oral evidence led in reference no.

238 of 1997 and the workman was cross examined by the municipality; certain documents were produced by the workman before the labour court. In respect of the workman covered by special civil application no. 12705 of 2001, after filing of the written statement by the municipality, certain documents were produced by the Municipality and the same purshis was filed to consider and adopt the oral evidence led in reference no. 238 of 1997 and, thereafter, the matter was heard by the labour court on merits. Similarly, in special civil application no. 12706 of 2001, after filing of the written statement, the workman was examined and the same purshis was submitted to adopt the oral evidence led in reference no. 238 of 1997 vide purshis at Exh. 16 and, thereafter, the matter was examined by the labour court on merits. In Special Civil Application No. 12700 of 2001 also, same pattern has been followed by the petitioner municipality.

I have perused each award made by the labour court. Before the labour court, the petitioner municipality has not produced any evidence either documentary or oral giving detail as to for how many days, the workman concerned has worked during his service period. The fact which has revealed from the record of each petition is that the duration of service of each workman details of which have been given by this court as aforesaid is to the effect that each workman has continuously worked for more than one year and the workman covered by special civil application no. 630 of 2002 has remained in service for more than seven years and in the workman in special civil application no. 12702 of 2002, the workman continued in service for a period of more than seven years and thus, except in one case, each workman has completed more than 240 days continuous service. These facts have not been disputed by the petitioner municipality before the labour court. Not only that but no evidence contrary thereto has been produced before the labour court by the petitioner municipality. It is not the case of the petitioner municipality that before terminating the services of each workmen, it has complied with the provisions of section 25-F of the Industrial Disputes Act, 1947. Meaning thereby, when the services of each workmen were terminated by the petitioner municipality, it has not one month's notice or one month's salary in lieu thereof to the workman concerned nor has it paid the retrenchment compensation to the workman concerned as required under section 25-F of the Industrial Disputes Act, 1947. Keeping in view this admitted position, the labour court

has considered this aspect that in each case, the Keshod Municipality has committed breach of the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947. It is also not in dispute that in each case, the workman was examined before the labour court wherein it was specifically deposed by the workman that after termination, he remained unemployed and has not been gainfully employed elsewhere. This evidence has also gone unchallenged before the labour court. No evidence in that regard has been produced and proved by the petitioner municipality before the labour court. These are the undisputed facts appearing from the record.

In view of the aforesaid undisputed facts emerging from the record in this group of petitions, the only question arising is that when the petitioner Municipality has committed the breach of section 25-F of the Industrial Disputes Act, 1947, whether the labour court is justified in making the award of reinstatement with back wages or not and whether the labour court has committed any error in passing such an award in favour of the workman concerned covered by this group of petitions.

The law in this regard is very well established since many years. In view of the non compliance of the mandatory provisions of section 25-F of the I.D. Act, the order of termination becomes null and void and mere declaration to that effect is necessary that the workman is deemed to be in continuous service and is entitled to all the consequential benefits. This aspect has been examined by the Division Bench of this Court in case of M.P. Ramanandi v. Gujarat State Warehouding Corporation reported in 1985 (2) GLR page 1040. In para 2, 3 and 4 of the said judgment, it has been observed by the Division Bench of this Court as under :

'25-F. - no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for

every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in prescribed manner is served on the appropriate Government (or such authority as may be specified by appropriate Government by notification in the Official Gazette.)'

The marginal note of sec. 25F clearly states, "Conditions precedent to retrenchment of workmen". Admittedly, those conditions have not been followed before the discharge was effected in this case. We have already held that this is a case of retrenchment and that position is accepted by the labour court. The respondent has to concede this position since the action initiated against the petitioner is under Regulation 10 of the Regulations referred above. In Mohan Lal v. The Management of M/s. Bharat Electronics Ltd. (AIR 1981 SC 1253), the Supreme Court has specifially held that where pre-requisite for valid retrenchment as laid down in sec. 25F has not been complied with, retrenchment bringing about termination of service is ab initio void, continuing the Supreme Court held in para 16 of its judgment;

16. Appellant has thus satisfied both the eligibility qualifications prescribed in section 25-F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service."

In yet another judgment of the Supreme Court reported in Management of Karnatak State Road Transport Corporation Bangalore v. M. Boraiah and another (AIR 1983 SC 1320), the Supreme Court had occasion to consider the retrenchment of a probationer. In that case, also the Supreme Court has held;

'13. Once the conclusion is reached that retrenchment as defined in sec. 2(oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly, the requirements of sec. 25F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequences of non compliance of sec. 25F of the Disputes Act in a case where it applied made the order of termination void.The High Court, in our opinion, has therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs.5000.00. '

Thus, from the aforesaid judgments, it is clear that if the pre condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated must be deemed to be in continuous service.

"3. Inasmuch as we have already held that the respondent has not followed the condition requisite for terminating the service of the petitioner herein the order of termination Exh. 30 is ab initio void and hence the Labour Court is completely in error when it accepted the order of termination and directed the payment of retrenchment compensation as the only relief the petitioner is entitled to have. Such an order of the Labour Court, in our opinion, is without jurisdiction and contrary to law laid down by the Industrial Disputes Act, and hence this Court has ample jurisdiction to interfere with such patently erroneous and illegal order for the

> purpose of giving relief to the petitioner herein. Mr. Trivedi submitted that the matter may be remanded to the Labour Court for the purpose of determining the amount payable as backwages. We do not think that this argument can be countenanced inasmuch as no contention has been taken in the written statement that he was actually engaged in some other job during this period and inasmuch as the order passed under Exh.30 is ab initio void."

Therefore, in view of the observations as aforesaid made by the Division Bench of this Court as well as the observations made by the Hon'ble Apex Court, the order of termination is null and void and the workmen concerned covered by this group of petitions is deemed to be continuous in service with all the consequential benefits including full back wages.

Similarly, recently also, the apex court has considered this aspect in para 16 of the decision in case of Management of M.C.D. v. Prem Chand Gupta reported in AIR 2000 SC 454. In the said decision, the apex court has held that if the workman remained continue in service and has completed 240 days continuous service, then, such a workman is entitled for the protection of the provisions and the termination without following the procedure, then, such termination amounts to retrenchment and non payment of retrenchment compensation with notice or notice pay in lieu of such notice would render such order of termination null and void ab initio and the workman concerned is entitled to the logical consequential benefits meaning thereby, he would be entitled to be reinstated in service with continuity and in normal course, he would be entitled to full back wages for the intervening period.

As regards the contention raised by Ms. Mandavia that the petitioner Keshod Municipality is a public body and the amount of back wages awarded by the labour court would result into burdening the public exchequer, and there is no post or fund available with the Nagarpalika, it should be observed that the workmen concerned were retrenched without following the procedure laid down under the Act, meaning thereby, they were not given any notice or notice pay in lieu thereof nor were they paid the retrenchment compensation and they were not allowed to resume the work though the workmen were prepared to remain in service and to work but because of the illegal order, they remained out of service for such a long period for no fault of their own. Thus, the workmen were

prepared to work but were not allowed by the Municipality to work. In that regard, it is also required to be considered that before the labour court, the petitioner has not high lighted the non availability of posts or funds with the petitioner and this inability has been pointed out by the municipality before this court which has no meaning after the awards granting full back wages have been passed against the petitioner municipality and in favour of the workmen concerned in view of the non compliance of the mandatory provisions of the Act and further, the workmen have been compelled to suffer unemployment for the intervening period and before passing such ab initio void order of termination, the petitioner municipality ought to have given second thought to such an act on its part as to what would be the position of the workmen if he is removed, if his services are terminated without following the procedure prescribed under the Act, how would he maintain himself and his family members without work and wages? What would be the fate of his children who are prosecuting their studies in the schools and/or colleges and what would be the fate of their children who are of marriageable age ? In such circumstances, during the period of unemployment, the workman has to face many difficulties in the society because after his removal from service, even his relatives and the neighbours would not be prepared to lent him even small amount of five rupees because they would, before giving any amount to him, take into account his repaying capacity and they would consider that now there is no source for repayment by the workmen concerned and, therefore,when because of the illegal action, the workmen is put in such a strict and harsh condition making his survival in the society difficult, making him the victim of the circumstances in the society, the petitioner also has to face the consequences of such illegal action on its part after the award is made by the labour court. Further, when the law is strict and mandatory, then, its logical consequences must have to be followed without any exception so that the employer can realize that because of his illegal action, ultimately, they have to suffer. In such circumstances, plea of Ms. Mandavia that the award is not sustainable since the petitioner has no funds and no posts are available with the petitioner cannot be accepted. Plea that the petitioner being the public body, award of back wages would affect the public exchequer cannot be accepted because being the public body, the petitioner should act and behave like a model employer. Therefore, that plea cannot be accepted and the same is, therefore, rejected.

This aspect has been considered by the Division Bench of this Court in case of Gram Panchayat, Damnagar v. Sharadkumar D. Acharya reported in 1994 (1) GLR 579. In para 4,5, 6 and 7 of the report, it has been observed by the Division Bench of this Court as under:

"4. The first contention is concluded by the Supreme Court in the case of Karnataka SRT Corpn. v. M. Boraiah, 1984 (1) SCC 244, wherein it has been held that section 2(oo) covers every case of termination of service except those which have been embodied in the definition and, therefore, discharge from employment or termination of service of a probationer, would also amount to retrenchment and compliance with the requirements in sec. 25F in the case of such termination is essential and necessary consequence of non compliance with section 25F would render the termination void. Therefore, the first contention must fail.

5. The second contention is also covered by the provisions of section 25B(2)(a) of the ID Act, as held by the Supreme Court in the case of Digwadih Colliery v. Workmen AIR 1966 SC 75. It is true that the workman had not been in continuous service for a period of full 12 months or one year and in fact, his service was of about 9 months only. However,the deeming provision of sub sec. (2) of sec. 25B is applicable in the present case which provides that a workman shall e deemed to be in continuous service for a period of one year, if the workman during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. In the present case, the workman has worked for more than 240 days in the preceding 12 calendar months and, therefore, he is deemed to be in continuous service for a period of one year and, therefore, retrenchment compensation was payable and it is admittedly not paid. Second contention also, therefore, must fail.

"6. Thirdly, it is submitted that the post has been abolished and, therefore, reinstatement could not have been granted. It is true that the Panchayat had abolished the post as a measure of economy and terminated the services of the workman. However, the Panchayat did not fulfil

the requirements of sec. 25-F and, therefore, termination is illegal and void and he has to be reinstated and, if necessary, the post has to be re-created to comply with the order of reinstatement. It is not open to an employer to contend that since the employer had abolished the post, the order of reinstatement could not be complied with. It would amount to giving licence to the employer to illegally terminate the services and to render the Court helpless in granting reinstatement. That would be perpetuating illegality and injustice. Therefore, petitioner's third contentions has no merit.

7. Lastly, it was submitted that because of the precarious financial condition of the Panchayat, the backwages should not have been awarded. Once it is held that the condition precedent has not been followed, the termination is void and ineffective and the workman is deemed to be continuing in service and entitled to backwages. The reason given of poor economic condition of the employer is not substantiated factually and is not of any avail legally."

It is also necessary to note that the petitioner has not proved any exceptional circumstances before the labour court for denying any back wages to the workmen. The petitioner has not proved gainful employment of the workman. As against that, the workmen in these petitions have proved unemployment before the labour court. Therefore, the labour court has rightly granted full back wages. In such circumstances, what is required to be considered has been examined by the Hon'ble Apex Court in the matter of Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin WOrks Pvt. Ltd. and others, reported in AIR 1979 SC page 75. The relevant observations made by the Hon'ble apex court in para 9 of the said judgment are reproduced as under:

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be

granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer trminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P.Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to

the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat V. Safai Kamdar Mandal, (1971) 1 Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. V. Labour Court, Lucknow, (1971) 1 Lab LJ 327 have taken this view and we are of the opinion that the view taken therein is correct."

Recently also, in the matter of Ram Ashrey Singh and another and Ram Bux Singh and others reported in [2993 (96) FLR 995]. the Hon'ble Apex Court has considered the decision reported in AIR 1979 SC 75 (supra) and has observed as under in para 6 of the judgment:

"6. When fixing the back wages several factors need to be noted. It is a well settled position in law that on reinstatement there is no automatic entitlement to full back wages. In Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin WOrks Pvt. Ltd. and others, [1978 (37) FLR 240 (SC) = AIR 1979 SC 75], a three Judge Bench of this Court laid down;

'In the very nature of things, there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be am otion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage. the Tribunal will exercise its discretion

> keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular [see Susannah Sharp v. Wakefield, (1981) AC 173, 179]."

Therefore, considering the view taken by the apex court as well as the division bench of this court and also looking to the record of the present group of petitions, it is very clear that while terminating the services of each workman, the petitioner municipality has not complied with the mandatory provisions of section 25F and as such, the labour court was right in declaring that the order of termination is illegal and in doing so, the labour court has not committed any jurisdictional error. It is also necessary to be noted that in none of the case of the present group of petitions, the petitioner municipality has not been able to justify the termination before the labour court. Thus, there was no justification to terminate the services of the workmen concerned and yet their services have been terminated by the employer. It is necessary to be noted that the provisions contained in section 25F of the I.D. Act is not giving licence to the employer to terminate the services of the workman by merely complying with the provisions of section 25F even in case of no justification. Therefore, the employer is required to establish and justify the action of termination before the labour court that he has terminated the services of the workman concerned in accordance with the provisions of section 25F of the Act and that there is genuine justification to terminate the services of the workman. In the facts of the present case, the petitioner municipality has failed on both the counts before the labour court. The labour court was, therefore, right in passing the impugned award in this group of petitions and was right in granting the reliefs in favour of the workmen concerned. Apart from that, this court is having very limited jurisdiction while exercising the powers under Article 226 and 227 of the Constitution of India. This aspect has been recently examined by the apex court

in case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13 has examined the scope of jurisdiction in a petition under Article 226/227 of the Constitution of India. Relevant observations made by the apex court in the said decision are reproduced as under:

2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In Nibaran this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the

findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

Thus, unless and until it is successfully pointed out that the labour court has acted without jurisdiction or that the findings recorded by the labour court are contrary to record or are perverse, this court cannot interfere with the findings recorded by the labour court while exercising the extra ordinary powers under Article 226 and/or 227 of the Constitution of India. Ms.Mandavia has not been able to point out any jurisdictional error and/or infirmity in the awards under challenge. According to my opinion, the labour court has not committed any jurisdictional error while passing such awards; the findings recorded by the labour court are not contrary to the evidence on record. She has also not been able to point out any procedural irregularity committed by the labour court. Therefore, all these petitions are having no substance and are required to be dismissed.

For the reasons recorded hereinabove, all these petitions are hereby dismissed.

Dt.2.4.2003. (H.K. Rathod,J.)

Vyas